



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GERARD O'NEILL

Plaintiff,

-against-

TITO HERNANDEZ, RICARDO MORALES,
and NEW YORK CITY HOUSING AUTHORITY,

Defendants.
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KIMBA M. WOOD, U.S.D.J.:

08 Civ. 1689(KMW)

ORDER

On May 18, 2009, Gerald O'Neill ("Plaintiff"), filed pro se a document entitled "Plaintiff's Reply to the Opinion and Order of Judge Kimba Wood Dated March 31, 2009." Counsel for Tito Hernandez, Ricardo Morales, and New York City Housing Authority (collectively, "Defendants"), correctly treated Plaintiff's filing as a Second Amended Complaint in the above-captioned action.

On August 7, 2009, Defendants filed a motion to dismiss, or, in the alternative, a motion for summary judgment. In this motion, Defendants seek to dismiss Plaintiff's Second Amended Complaint on the ground that Plaintiff has failed to state a plausible claim for relief. Defendants argue that if the Court disagrees and finds that Plaintiff does state a plausible claim for relief, the Court should consider the evidence Defendants

have submitted. Defendants argue that their evidence establishes that the Court should grant their motion for summary judgment on the grounds that Plaintiff's claims were not filed on time and are without merit.

On August 7, 2009, Defendants served upon Plaintiff a notice that informed Plaintiff that: "[t]he claims you assert in your complaint may be dismissed without a trial if you do not respond to this motion by filing your sworn affidavits or other papers as required by [Federal Rule of Civil Procedure] 56(e)." The notice correctly stated that if Plaintiff wanted to respond to any of Defendants' legal or factual arguments, Plaintiff was required to do so by August 26, 2009.¹

Plaintiff has not filed an opposition to Defendants' motions, and has not requested an extension of time. The Court sua sponte (on its own) extends Plaintiff's time to file objections to Defendants' motions.

Plaintiff has until **October 26, 2009 at 5:00 p.m.** to file with the Court a copy of his response to Defendants' motion to dismiss and motion for summary judgment. This response may include legal and factual support for Plaintiff's claims.² After

¹ Pursuant to Local Rule 6.1, Plaintiff's opposition to Defendants' motions was due on August 26, 2009.

² The Court recognizes that on May 18, 2009, Plaintiff submitted exhibits in support of the Second Amended Complaint.

October 19, 2009, any subsequent response by the Plaintiff to Defendants' motions will be deemed untimely and will not be taken into consideration by the Court. The consequences of this is that the Court may dismiss Plaintiff's Second Amended Complaint, and, thus, Plaintiff's claims may be denied, without his having further opportunities to pursue these claims.

Defendants may file any reply by November 16, 2009 at 5:00 p.m.

SO ORDERED.

Dated: New York, New York
October 1, 2009

Kimba M. Wood
Kimba M. Wood
United States District Judge

The Court will consider these exhibits when deciding Defendants' motions.

In this Order, the Court is providing Plaintiff with an opportunity to submit any additional evidence he wishes, which may include an affidavit in support of his claims.